

§ 1412.33

case the production for the crop for such year will be zero:

(i) The total production for the applicable year based on the production evidence submitted in accordance with § 1412.34; or

(ii) The amount equal to the product of:

(A) The total planted acres for the crop, times

(B) 75 percent of the harvested average county yield for that crop determined, where practicable, by calculating the weighted 4-year average of the National Agricultural Statistics Service (NASS) harvested acreage yields for the crop using the 1998 through 2001 crop years.

(3) The NASS harvested acreage yield to be used in paragraph (b)(2) of this section will be based on:

(i) NASS harvested irrigated yield for the crop, if available, for producers who irrigated the crop in the applicable years;

(ii) NASS harvested non-irrigated yield for the crop, if available, for producers who did not irrigate the crop in the applicable years; or

(iii) NASS harvested blended yield for all acreage, regardless of whether or not the acres were irrigated or non-irrigated, for all crops in all counties for which the yields in paragraphs (b)(3)(i) and (ii) of this section are unavailable.

(4) If NASS harvested acreage yield data is not available, the Deputy Administrator will assign a yield to be used in paragraph (b)(2)(ii)(B) of this section.

§ 1412.33 Payment yield for counter-cyclical payments for covered commodities.

The counter-cyclical payment yield for covered commodities on the farm will be equal to the counter-cyclical payment yield established for the covered commodity on the farm that was effective September 30, 2007. Counter cyclical payment yields for designated oilseeds or eligible pulse crops for which direct payment yields were not established as of September 30, 2007, will be equal to the direct payment yield established in accordance with §§ 1412.32 or 1412.34, as applicable.

7 CFR Ch. XIV (1–1–10 Edition)

§ 1412.34 Submitting production evidence for establishing direct payment yields for oilseeds and pulse crops.

(a)(1) Reports of production evidence must be submitted when the owner elects to establish a direct payment yield for designated oilseeds for which a yield was not established by September 30, 2007, and pulse crops for the farm in accordance with § 1412.32.

(2) Producer or third-party certification will not be accepted as proof of production evidence.

(3) Reports of production evidence for designated oilseeds for which a yield was not established by September 30, 2007, and for pulse crops must be provided to the county committee of the county where the farm is administratively located, by farm and crop in such manner as required by CCC on a CCC-approved standard, uniform form designated by CCC.

(b)(1) When disposition of production has been through commercial channels, CCC may require the producer to furnish documentary evidence in order to verify the information provided on the report of production. Acceptable evidence may include, but is not limited to, such items as:

(i) Production approved by the county committee for Loan Deficiency Payments;

(ii) Commercial receipts;

(iii) Settlement sheets;

(iv) Warehouse ledger sheets;

(v) Elevator receipts or load summaries, supported by other evidence showing disposition, such as sales documents;

(vi) Evidence from harvested or appraised acreage, approved for FCIC or multi-peril crop insurance loss adjustment settlement; or

(vii) Other production evidence determined acceptable by the Deputy Administrator.

(2) Such production evidence must show:

(i) The producer's name,

(ii) The commodity,

(iii) The buyer or name of storage facility,

(iv) The date of transaction or delivery, and

(v) The quantity.

Commodity Credit Corporation, USDA

§ 1412.35

(c) When production of a designated oilseed for which a yield was not established by September 30, 2007, and pulse crops has been disposed of through non-commercial channels, then 75 percent of the county average yield as determined in accordance with §1412.32(b)(4) will be used.

(d) CCC may verify the production evidence submitted with records on file at the warehouse, gin, or other entity which received or may have received the reported production.

§ 1412.35 Incorrect or false production evidence of oilseeds and pulse crops.

(a) If production evidence submitted in accordance with §1412.34 is false or incorrect, as determined by the county committee, the county committee will determine whether the owner or producer submitting the production evidence for a farm acted in good faith or took action to defeat the purpose of the program.

(b)(1) If the county committee determines the production evidence submitted is false, incorrect, or unacceptable, and the owner or producer who submitted the evidence did not act in good faith or took any action to defeat or undermine the purpose of the program, the county committee will:

(i) Require a refund of all direct and counter-cyclical payments earned for the farm for the first year such payments were made;

(ii) For designated oilseeds or pulse crops, reduce both the direct and counter-cyclical payment yields to 75 percent of the county average yield as determined in accordance with §1412.32(b)(4). That yield will then be reduced by the applicable direct payment yield factor in accordance with §1412.32(a)(1); and

(iii) Subject to paragraph (a)(2)(i) of this section, regarding the first year of payments, require a refund of an amount equal to the following for designated oilseeds or pulse crops for each year the false, incorrect, or unacceptable yield was used to make payments under the contract:

(A) The sum of the direct and counter-cyclical payments made using the false, incorrect or unacceptable evidence, minus

(B) The sum of the direct and counter-cyclical payments that would have been made based on the yields established in paragraph (b)(1)(ii) of this section.

(2) Notwithstanding paragraph (b)(1) of this section, if the county committee determines that the production evidence submitted is false, incorrect, or unacceptable, and the owner or producer who submitted the evidence did not act in good faith or took action to defeat the purpose of the program, the Deputy Administrator may take further action, including but not limited to, any or all of the following:

(i) Make a further yield reduction for part or all of the designated oilseeds or pulse crops on the farm;

(ii) Make further payment reductions or refunds;

(iii) Determine that the owner or producer who submitted the evidence is ineligible for participation in future contracts unless the Deputy Administrator determines otherwise; or

(iv) Take other legal action.

(c) If the county committee determines the production evidence submitted is false, incorrect, or unacceptable, and the owner or producer who submitted the evidence acted in good faith and did not take action to defeat the purpose of the program, the county committee will:

(1) Correct the counter-cyclical yield for the applicable covered commodity or peanuts to equal the yield that would have been calculated in accordance with §1412.33 based on accurate production evidence; and

(2) Require a refund of an amount equal to the following for each covered commodity and peanuts for each year the false, incorrect, or unacceptable yield was used to make payments under the contract:

(i) The sum of the direct and counter-cyclical payments made using the false, incorrect, or unacceptable evidence, minus

(ii) The sum of the direct and counter-cyclical payments that would have been made based on the yields established in paragraph (c)(1) of this section.